

Having reviewed the entire evidentiary file contained herein, the Appeals Board finds that the Order of the Administrative Law Judge should be reversed with regard to any guaranties provided by the Fund.

In its Order of March 31, 2003, the Workers Compensation Board (Board) found that claimant had met his burden of proof that on the date of injury, he was a statutory employee of respondent Mid-Continent Specialists, Inc. The Board went on to find that Mid-Continent Specialists, Inc., is liable for the payment of any compensation ordered. There was no determination that Mid-Continent Specialists, Inc., was, in any way, insolvent or unable to pay at that time.

K.S.A. 44-532a (Furse 1993) allows for liability against the Fund if and when the employer is found to be financially unable to pay compensation to an injured worker as required by the Kansas Workers Compensation Act. The statute states in part:

Whenever a worker files an application under this section, the matter shall be assigned to an administrative law judge for hearing. If the administrative law judge is satisfied as to the existence of the conditions prescribed by this section, the administrative law judge may make an award, or modify an existing award, and prescribe the payments to be made from the workers compensation fund as provided in K.S.A. 44-569 and amendments thereto.

The Fund's objection in this matter is to the Administrative Law Judge's Order that the Fund be the guarantor of the benefits ordered without benefit of a hearing as required by K.S.A. 44-532a (Furse 1993). The Board agrees. There has never been a determination in this matter that respondent was unable to make the payments as ordered. If this allegation is raised, then the statute mandates that a hearing be held to determine whether the conditions prescribed do, indeed, exist. As no such hearing has been held in this matter, it is beyond the Administrative Law Judge's jurisdiction to order any liability against the Fund at this time.

Therefore, the Board finds that the Order of the Administrative Law Judge obligating Mid-Content Specialists, Inc., as the statutory employer of claimant, to pay for the cost of the medical services ordered is appropriate, but the Order requiring the Fund to guarantee the matter is inappropriate and is reversed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Post Award Order For Treatment of the Administrative Law Judge dated July 3, 2003, should be, and is hereby, affirmed with regard to the liability of Mid-Continent Specialists, Inc., but is reversed with regard to any guaranties provided by the Kansas Workers Compensation Fund.

IT IS SO ORDERED.

Dated this ____ day of September 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: C. Albert Herdoiza, Attorney for Claimant
Robin Scully, Attorney for Self-Insured Respondent
Michael R. Wallace, Attorney for Fund
Robert H. Foerschler, Administrative Law Judge
Paula S. Greathouse, Director